IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 2238 of 2006

Date of decision : 9.10.2006.

Balraj Singh

.....Petitioner.

Versus

Pritam Singh.

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Kanwaljit Singh, Advocate
for the petitioner.

Mr. Vikas Bahl, Advocate
for the respondent.

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VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against the order dated 23.12.2005 passed by the learned Civil Judge (Jr.Divn.), Nawanshshar vide which application moved by the petitioner under Order 39 Rules 1 & 2 C.P.C. was rejected keeping in view the terms of the agreement to sell on receipt of Rs. 14,50,000/- to the petitioner. The petitioner had handed over the possession to the respondent and this fact was duly incorporated in the agreement to sell. The appeal filed by the petitioner was also dismissed.

The learned counsel for the petitioner has challenged the order passed by the learned Courts below on the plea that latest Khasra-Girdawaries i.e. for the year 2005-06 shows that the petitioner to be in possession of the properties in dispute. He has further stated that he is in possession of 'J' form issued by the Grewal and Co. showing the sale of the

agricultural produce by the petitioner. It is also contended by the learned counsel for the petitioner that recital in the agreement is very weak type of evidence on which no prima facie reliance has been placed.

I have considered the contentions of the petitioner and find no force in the same. It is not in dispute that the petitioner has admitted that the agreement was executed between the parties which does have a recital of possession having been handed over to the respondent. Even if the said agreement to sell is not registered it would not debar the respondent from protection under Section 53-A of Transfer of Property Act (for short 'the Act'). However, in view of the provision under section 49 of the Registration Act of the same can be used as evidence of possession, once the document is not in dispute. It is not open to the petitioner to say that actual physical possession was not given and only symbolic possession was given.

There is no error or illegality in the order which may call for interference by this Court under Article 227 of the Constitution of India.

Dismissed.

October 9,2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**